GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Sri. B. S. Lakshminarayana Setty, Proprietor, Nagendra Transport, III Main Road, Tharagupet, Bangalore-2.

Award of the Labour Court, Bangalore—published.

Read the following papers :—

(1) Letter No. 979/67-68, dated 30th November 1967, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER.

LABOUR COURT, BANGALORE.

Dated this 30th day of November 1967.

Present :

Shri P. T. Kadkol, B.Sc. LL.B. ... *Presiding Officer.*

Reference No. 10 of 1967.

Sri B. S. Basha, Door No. 210, Bazaar Street, Nellasandra, Bangalore-7. ... *First Party,*

Vs.

The Management of Sri B. S. Lakshminarayana Setty, Proprietor Nagendra Transport, III Main Road, Tharagupet, Bangalore-2.

Second Party.

Reference

Government Order No. LMA 11 LLD 67, dated 6th February 1967.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of Sri B. S. Lakshminarayanasetty, Proprietor, Nagendra Transport,

Bangalore, have referred it to this court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 11 LLD 67, dated 6th February 1967, setting out the following points of dispute for adjudication :—

> " Is the management of Nagendra Transport, III Main Road, New Tharagupet, Bangalore-2 justified in dismissing Sri B. S Basha ? If not, what is the relief the petitioner is entitled to ? "

2. This Reference has been made by the Government under Section 10 (1) (c) of the Industrial Disputes Act, read with Section 2-A thereof. The aggrieved workman is Mr. B. S. Basha. He was serving as a lorry driver under the Second Party, which is, Nagendra Transport, Bangalore and the proprietor of which is Mr. B. S. Lakshminarayana Setty. The grievance of Basha is that he has been wrongfully dismissed from service by the management of the Second Party, with effect from 11th October 1965. Basha is represented by Advocate Mr. Gurulingappa and the second party is represented by Advocate Mr. Raj Iyyengar.

3. In response to the notice issued by this Court, Basha has submitted the statement of claims dated 16th March 1967. He has not referred to any facts therein. He has annexed thereto a copy of the application presented by him to the Labour Commissioner, Bangalore under Section 39 (2) of the Shops and Commercial Establishments Act of 1961. He has asked this court to peruse it and pass necessary orders. He has not said anything about the termination of his service by the Second Party nor has he asked for his reinstatement. The copy of the application annexed by him to the claim statement only shows that he wants the Management to pay him a sum of Rs. 1,575-80 P. under seven heads mentioned therein.

4. To this claim statement, the Management has submitted its statement of objectionr dated 24th April 1967. It has said therein that Basha had filed an application before the Authority under the Payment of Wages Act claiming the identical amount of Rs. 1,575-80 P. under identical heads and it had been dismissed by that Authority and hence he Basha) was not entitled to any reliefs at the hands of this court in this proceedings.

5. After perusing these pleadings, I passed an order on 20th June 1967 (*vide* Order Sheet), setting out all the necessary facts and calling upon Basha to say, what reliefs he would seek from this Court.

6 In response to it, Basha has submitted an additional claim statement on 23rd June 1967 alleging that the Management has wrongfully dismissed him from service with effect from 11th October 1965 and praying that it should be set aside and the Management be directed to reinstate him in his former post with backwages and continuity of service and he be awarded the arrears of the dues as claimed, in the first claim statement.

7. To this additional claim statement, the Management has submitted its statement of objections dated 7th July 1967. It has contended that the present dispute referred for adjudication is not an industrial dispute. It has also contended that it has not dismissed Basha nor terminated his service. Its case is that Basha has stayed away from work for reasons best known to himself, with effect from 18th September 1965. It has prayed that the Reference be rejected.

8 The following issues have been framed and set down for hearing :—

1. Does the First Party prove that the Managament of the second party has dismissed Basha or otherwise terminated his service?
2. Is he entitled to reinstatement?
3. What Award?
4. Is the referred dispute an industrial dispute and if not has this court jurisdiction to adjudicate upon it?

Parties were asked to lead evidence on these issues and they have done so. Basha has examined himself as W.W. 1 and produced one document marked Ex. W 1. Lakshminarayana Setty has examined himself as M.W.1 and produced one document marked Ex. M.1. This is all the evidence in the case.

9. The first question arising for decision is whether the present dispute is an industrial dispute. Basha has stated that he is not a member of any trade union, the employees under the second party who were 12 in number, have not got their own

union; and he had not asked any of the other workmen under the second party, they supported or sponsored his cause. This means that the cause of Basha has not been sponsored by his own union, for, there is no so much union, it has not been sponsored by any other general trade union because, he is not a member of any Trade Union it has also not been sponsored by any of his colleagues and workers, in the same establishment. Hence under the general law, the present dispute cannot be considered to be an industrtal dispute.

10. After making the above statement. Basha switched to another story, He stated that some workmen in the establishment had supported his cause and as evidence thereof, had given him the document at Ex. W.1. The text of Ex. W.1 runs as under ;- -

> "We the workers of the Second Party hereby resolved that the Second party has illegally dismissed the services drivers, namely, Abdul Gaffar, Venkoba Rao, M. Nanjappa and B. S. Basha. We authorise Mr. B.S. Basha to fight before the Labour Court authorities for our grievances."

Below this text, appear the signatures of three persons, who are (1) M.A. Basith, (2) Abdul Gaffar and (3) Venkoba Rao. This document Ex. W.1 does not bear any date Basha has stated that M. A. Basith and Venkoba Rao had left the services under the Second Party before he was dismissed and only Abdul Gaffar is in the service of the Second Party now. If Basith a and Venkoba Rao had left the services under the Second Party (it may be noted that Basha does not say that they too had been dismissed) before the dismissal of Basha, their support to the cause of Basha would be of no help at all. This means only one worker (if Ex. W.1 is believed) has supported the cause of Basha out of the total number of 12 workers. This support of one worker would not make the present dispute an industrial dispute.

11. Then we find that Basha's services have come to an end on 11th October 1965 and Section 2.A of the Industrial Disputes Act, has come into force on 1st December 1965. Section 2-A has no retrospective effect or operation. On this ground also the present dispute can not be considered to be an industrial dispute. In these circumstances, therefore, I hold that the present dispute is not an industrial dispute and so this court has no jurisdiction to adjudicate upon it and record my finding on the fourth issue accordingly.

12. In view of this conclusion reached by me on the fourth issue, it is not necessary to go into the first and second issues and record any findings on them. Even then, I proceed to consider them.

13. Basha has stated that his relations with Lakshminarayana Shetty were quite good till 11th October 1965 and on that day, without any reason whatsoever, the latter told him orally tha his services were no longer required. on the other hand Lakshminarayana Setty has stated that Basha made the last trip of the lorry on 18th September 1965 and did not turn up for work thereafter; he waited for Basha till 30th September 1965; on that day Basha came for his salary; when asked why he had not come for duty from 18th September 1965, Basha told him that he had gone to his village, as some one was ill; he paid salary to Basha and asked him when he would come for duty; Basha then told him that he would not come back for his job, as he had offers of a higher salary.

14. The above is all the evidence regarding the manner in which Basha's services came to an end. It is difficult to make a choice between the two verisions. However, it needs be noted that Lakshminarayana Setty did require a driver even on 11th October 1965 and when his relations with Basha were good, it would be difficult to understand, why he should terminate Basha's services and think of engaging another driver in his place. Basha carries the burden of proving that his services have been terminated by the Management of the Second Party otherwise than in due course of law. But on this point, he has no evidence other than his own interested word. He has not oxamined any of his colleagues or the persons who have signed on Ex. W. 1 to say that he had been dismissed from service or his services were terminated otherwise than by following the accepted legal procedure. When the evidence is equally balanced, the party carrying the burden must fail. Hence I record my finding on the first issue in the negative. It follows that he is not entitled to reinstatement, I, therefore, record my finding on the second issue also in the negative.

15. The last question is whether Basha is entitled to the amount claimed by him. He has claimed a total sum of Rs. 1,575·80 P made up of seven items. He had claimed the identical amount made up of the same identical items, before the Authority under the Payment of Wages Act, namely, the Second City Magistrate, Bangalore. That Authority rejected the entire

claim by its order in Cr. Mis. No. 39 of 1966, dated 23rd April 1966. The copy of that order has been produced at Ex. M. 1. Against this order at Ex. M. 1 Basha had filed an appeal. He has admitted in his deposition (*Vide* Para 3) that the appeal was also dismissed by the Appellate Authority. I do not think that Basha should be allowed to agitate the same claim over again in this proceeding. Moreover many of the items claimed by Basha go beyond the purview of the order of Reference. Hence I hold that Basha is not entitled to the amount claimed by him, in this proceeding.

16. In the result, therefore, I make the following Award.

AWARD.

This Reference and all the demands made by the aggrieved workman Sri B. S. Basha stand rejected with no order as to costs.

P. T. KADKOL,

Presiding Officer,
Labour Court, Bangalore.

" Copy "

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Presiding Officer.
Labour Court, Bangalore.

ORDER.

Bangalore, dated 8th December 1967.

S. O. 2426.—WHEREAS by State Government Order No. LMA 11 LLD 67, dated 6th February 1967, the Industrial Dispute between the Workmen and the Management of Sri B. S. Lakshminarayana Setty, Proprietor, Nagendra Transport, III Main Road, Tharagupet, Bangalore-2, was referred to the Labour Court, Bangalore for adjudication;

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 11 LLD 67.]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT, *Under Secy.*